

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

THOMAS K. MILLS,

Plaintiff,

v.

ZACHERY JONES, et al.

Defendants.

No. 1:23-cv-01214-JLT-SAB (PC)

ORDER DENYING PLAINTIFF'S REQUEST
FOR ENTRY OF DEFAULT

(ECF No. 19)

Plaintiff is proceeding pro se and in forma pauperis in this action filed pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff's request for entry of default, filed December 4, 2023. (ECF No. 19.)

Entry of default is appropriate as to any party against whom a judgment for affirmative relief is sought that has failed to plead or otherwise defend as provided by the Federal Rules of Civil Procedure and where that failure is shown by affidavit or otherwise. See Fed. R. Civ. P. 55(a). Rule 12 of the Federal Rules of Civil Procedure provides, "[A] defendant must serve an answer within 21 days after being served with the summons and complaint; or if it has timely waived service under Rule 4(d), within 60 days after the request for a waiver was sent." Fed. R. Civ. P. 12(a)(1)(A). If a defendant fails to plead or otherwise defend an action after being properly served with a summons and complaint, a default judgment may be entered pursuant to

1 Rule 55(a) of the Federal Rules of Civil Procedure.

2 Plaintiff requests an order entering default because a screening order was issued and “the
3 summons and complaint was served on the defendants[,]” no answer has been filed within 21
4 days. (ECF No. 19 at 2.)

5 Plaintiff’s request for entry of default shall be denied. A review of the record reflects that
6 on November 6, 2023, Findings and Recommendations were issued recommending that the action
7 proceed against Defendants Zachery Jones and Javier Rivera for excessive force in violation of
8 the Eighth Amendment, and all other claims be dismissed from the action for failure to state a
9 cognizable claim for relief. (ECF No. 16.) The Findings and Recommendations are pending
10 review by the District Judge. Accordingly, the Court has not yet ordered service on Defendants
11 and no response is due. Thus, Plaintiff’s request for entry of default judgment must be denied.

12 IT IS SO ORDERED.

13
14 Dated: **December 5, 2023**


UNITED STATES MAGISTRATE JUDGE